

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GARY SHEPARD,

Plaintiff,

v.

CHARLES DANIELS, *et al.*,

Defendants.

Case No. 3:20-cv-0062-RCJ-CLB

ORDER

This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by Plaintiff, who is incarcerated in the custody of the Nevada Department of Corrections (NDOC). On April 29, 2021, the Court issued a screening order pursuant to 28 U.S.C. §1915A dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within 30 days. ECF No. 3. On June 9, 2021, the Court granted Plaintiff's motion for an enlargement of time to June 27, 2021 to file an amended complaint. ECF Nos. 5, 6. The extended period to file an amended complaint has now expired and Plaintiff has not filed an amended complaint.

I. DISCUSSION

District courts have the inherent power to control their dockets and, in the exercise of that power, may dismiss a case where appropriate. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules may warrant dismissal of an action with prejudice. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258,

1 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring
2 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
3 (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep
4 court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
5 1987) (affirming dismissal for failure to comply with court order); *Henderson v. Duncan*,
6 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure
7 to comply with local rules).

8 In determining whether to dismiss an action for lack of prosecution, failure to obey
9 a court order, or failure to comply with local rules, the court must consider several factors:
10 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
11 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
12 favoring disposition of cases on their merits; and (5) the availability of less drastic
13 alternatives. See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
14 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

15 Here, the Court finds that the first two factors, the public's interest in expeditiously
16 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
17 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
18 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
19 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
20 *West*, 542 F.2d 522, 524 (9th Cir. 1976).

21 The fourth factor—public policy favoring disposition of cases on their merits—is
22 greatly outweighed by the factors in favor of dismissal discussed herein. Further, this
23 factor is mitigated in this matter because § 1915A requires that, before docketing a
24 complaint filed by an inmate, the Court must identify and dismiss any claims that are
25

1 frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
2 monetary relief from a defendant who is immune from such relief. See 28 U.S.C. 1915A.
3 Similarly, under the Prison Litigation Reform Act (PLRA), a federal court must dismiss, at
4 any time, an incarcerated person's claim if the claim "is frivolous or malicious, fails to
5 state a claim on which relief may be granted, or seeks monetary relief against a
6 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2).

7 In the Screening Order, the Court found that Plaintiff failed to state a cognizable
8 claim upon which relief could be granted. ECF No. 3 at 6-9. The Court noted the
9 deficiencies of Plaintiff's claims that could be cured by amendment and provided Plaintiff
10 an opportunity to amend his complaint to correct those deficiencies. By failing to timely
11 amend his complaint, Plaintiff has effectively elected to stand upon a complaint that fails
12 to state a cognizable claim and that cannot succeed on its merits. See *Harris v. Mangum*,
13 863 F.3d 1133, 1142 (9th Cir. 2017).

14 Finally, a court's warning to a party that his failure to file an amended complaint will
15 result in dismissal satisfies the fifth factor that the court consider less drastic alternatives.
16 *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424.
17 The Court's order requiring that Plaintiff file an amended complaint within thirty days
18 expressly stated: "THE COURT FURTHER **ORDERS** that, if Plaintiff fails to file an
19 amended complaint curing the deficiencies outlined in this order, this action will be
20 dismissed with prejudice for failure to state a claim." ECF No. 3 at 12. Thus, Plaintiff had
21 adequate warning that dismissal would result from his failure to prosecute this matter by
22 filing an amended complaint within the time provided by the Court.

23 II. CONCLUSION

24 For the foregoing reasons,

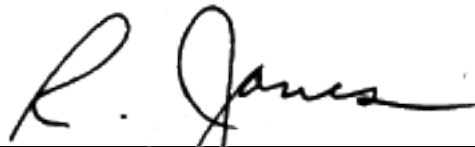
1 **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITH PREJUDICE**
2 as Plaintiff has failed to file an amended complaint that states a cognizable claim upon
3 which relief may be granted in compliance with this Court's April 29, 2021 Screening
4 Order and June 9, 2021 Order extending time.

5 **IT IS FURTHER ORDERED** that Plaintiff's application to proceed *in forma pauperis*
6 (ECF No. 1) is GRANTED. Plaintiff shall not be required to pay an initial installment fee.
7 Even though this action is dismissed, the full filing fee must still be paid pursuant to 28
8 U.S.C. § 1915(b)(2).

9 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by
10 the Prison Litigation Reform Act, the Nevada Department of Corrections will forward
11 payments from the account of **GARY SHEPARD, #69636** to the Clerk of the United
12 States District Court, District of Nevada, 20% of the preceding month's deposits (in
13 months that the account exceeds \$10.00) until the full \$350 filing fee has been paid for
14 this action. The Clerk of the Court will send a copy of this order to the Finance Division of
15 the Clerk's Office. The Clerk will send a copy of this order to the attention of **Chief of**
16 **Inmate Services for the Nevada Department of Corrections**, P.O. Box 7011, Carson
17 City, NV 89702.

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
19 accordingly and close this case.

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21 DATED THIS 21st day of July, 2021.

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23 
Robert C. Jones
United States District Judge
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